Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Services and in the Instructional Television Fixed Service	)	MM Docket No. 94-131
	)	
and	)	
	)	
Implementation of Section 309(j) of the Communications Act Competitive Bidding	)	PP Docket No. 93-253

PETITION FOR PARTIAL RECONSIDERATION

BELL ATLANTIC CORPORATION

Of Counsel:

James G. Pachulski
Bell Atlantic Network Services
1320 North Courthouse Road
Eighth Floor
Arlington, VA 22201
(703) 974-2804

John T. Scott, III
William D. Wallace
CROWELL & MORING
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 624-2500

Its Attorneys

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To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, Bell Atlantic Corporation (BAC), by its undersigned attorneys, hereby petitions for reconsideration of certain aspects of the rules and policies adopted in the above-referenced dockets on June 30, 1995.[1] See Report and Order, FCC 95-230 (released June 30, 1995) (hereafter BTA Order). BAC and NYNEX Corporation recently announced a minority investment in CAI Wireless Systems, Inc., which includes an option to lease capacity on certain of CAI's wireless transmission systems to provide video programming services. Accordingly, BAC has a

[1] Notice of the Report and Order was published in the Federal Register on July 17, 1995. See 60 Fed. Reg. 36523 (July 17, 1995). Hence, this petition is timely pursuant to Section 1.429(d).

substantial interest in the Commission's rules for licensing and operation of wireless cable systems adopted in the BTA Order.

I. SUMMARY

BAC requests reconsideration and modification of three aspects of the BTA Order. These modifications to the new rules and policies for MMDS stations would facilitate implementation of wireless cable systems under the Commission's new licensing regime. They would serve the public interest by expediting delivery of initial service within the BTA and permitting more efficient service in the long run.

First, the Commission should adopt a policy of allowing BTA authorization holders to establish transmitter sites anywhere within the boundaries of their geographic service areas, subject to interference protection standards, without having to seek prior approval for each transmitter at each site. The rules adopted for BTAs preclude construction of systems which would cause interference to MMDS systems of incumbent licensees or adjacent BTAs, and, therefore, the costly and time-consuming application and review process is unnecessary. Adoption of the changes proposed here would give the BTA authorization holder flexibility to configure its system to meet the needs and interests of its subscribers.

Second, the Commission should adopt rules which would ensure that the BTA authorization holder has access to vacant ITFS frequencies throughout the BTA. In many circumstances, access to such frequencies may be limited under

current procedures because of the lack of ITFS licensees in regions outside metropolitan areas and the limitations of Section 74.990 of the Commission's Rules for licensing MMDS entities on ITFS frequencies. Limiting the BTA authorization holder's access to ITFS spectrum may hamper its competitiveness. By adopting the policies proposed herein, the Commission can eliminate this gap in its rules and promote expansion of ITFS use as well.

Third, adoption of the rules in the BTA Order may result in inconsistent treatment of the protected service areas of MMDS channels and leased airtime on ITFS frequencies. For an MMDS operator which has built a wireless cable system with a combination of MMDS and ITFS frequencies, these inconsistencies may harm rather than promote its ability to serve subscribers. A few minor modifications to the rules adopted in the BTA Order would eliminate these potential problems.

II. IN ORDER TO EXPEDITE NEW MMDS SERVICE WITHIN THE BTAS, THE COMMISSION SHOULD SIMPLIFY THE LONG-FORM APPLICATION AND LICENSING PROCEDURES.

BAC fully supports the Commission's decision to adopt the general principle that interference protection for new MMDS stations should be co-extensive with the geographic boundaries for each MMDS-licensed Basic Trading Area (BTA). See BTA Order, ¶¶ 37, 39; see new § 21.933(a). Using protected service areas which are co-extensive with geographic license areas provides flexibility to new MMDS licensees to engineer systems which will maximize coverage throughout

the BTA, subject to interference protection standards. At the same time, the BTA authorization holder must comply with the new rules which generally restrict the signal strength of a BTA licensed transmitter at the edges of adjacent BTAs and an existing station's 35-mile circular protected service area. See BTA Order, ¶¶ 50-54.

While the Commission's new rules and policies for licensing BTAs promote flexibility in implementing MMDS service, the new procedures for processing "long-form" applications for each available frequency at each transmitter site within the BTA have the potential to delay service to the public and nullify the Commission's attempts to jump-start MMDS through the BTA licensing regime. Accordingly, application procedures should be developed which facilitate the intent of the BTA Order to maximize the flexibility of MMDS licensees to provide service to subscribers within a unified market while protecting existing and new MMDS stations.

The Commission's new rules require that a BTA authorization holder file a "long-form" application for each transmitter to be used at each transmitting site within the BTA. BTA Order, ¶ 39; see new § 21.925(b). These long-form applications are to be placed on public notice and would not be granted until after a 30-day period for filing petitions to deny has elapsed. See new § 21.925(d). This procedure in essence replicates the current application processing rules, which were adopted for the site-by-site licensing approach.

Given the past history of MMDS, and the need to expedite the processing of the MMDS, these rules should be modified. As the Commission is well aware, MMDS has a history of frequent disputes among neighboring MMDS operators, which result in paper battles at the Commission over the potential for harmful interference into each other's proposed facilities. See BTA Order, ¶ 28. These disputes have resulted in delays in implementing service and in many instances outright denial of service because of gridlock among applicants with proximate transmitter sites.

The BTA Order adopts policies which could eliminate such disputes among BTA authorization holders. Unlike MMDS stations licensed by transmitter site, BTA authorization holders have specific geographic boundaries. BTA Order, ¶ 39. Moreover, the Commission requires specific interference protection standards be met at the boundaries of adjacent BTAs and adjacent protected service areas of existing stations. See BTA Order, ¶ 49 ("The holders of BTA authorizations will not be permitted to cause interference within the boundaries of an adjacent BTA, without the consent of the authorization holder"); see also id., ¶¶ 53-54 & new § 21.938. Thus, the Commission has established relatively definite guidelines for how BTA facilities must be engineered to avoid the potential for interference into neighboring MMDS facilities.[2]

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[2] The Commission recognizes that it has in effect already engineered MMDS stations within the BTA. "The auction winners will be issued authorizations for specific geographic areas and will be permitted to operate one or more MDS transmitting stations and signal boosters anywhere inside the service area, provided the specific engineering design meets the Commission's interference

If the proposed transmitter of a BTA authorization holder cannot meet the specified signal strength at the border adjacent to the protected service area of another licensee, then the operator has two options. First, it may attempt to negotiate a resolution with its neighbor See new § 21.937. If that fails, then it must modify its facilities to meet the MMDS signal strength limits. See new § 21.939.

Thus, as the Commission concedes, there is little need for application processing procedures which will only engender the filing of a large number of long-form applications and petitions to deny such applications from adjacent MMDS licensees. See BTA Order, ¶ 51 ("Admittedly, this approach relies more on operator interference agreements and the honoring of another's interference rights than it does on applying rigid interference standards in the processing of applications"). Without an agreement with its neighbor, a BTA authorization holder constructs a station at its own risk, i.e., the risk of causing interference to an adjacent station which results in required modification of the interfering station. See new § 21.938(c); new § 21.939 The economic disincentive of building facilities which do not meet the specifications in the rules or a negotiated agreement should be sufficient to allow construction without formally licensing

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protection standards to all authorized and previously proposed MDS and ITFS facilities, and complies with the limits we establish for signal strength along the perimeter of the geographic area." BTA Order, ¶ 24.

each site.[3] In such a licensing regime, the Commission's long form application for BTAs simply provides a means for neighboring stations to object to predicted interference and thereby delay implementation of service.

The Commission should, therefore, revise the long-form procedures for BTA authorization holders and issue blanket BTA licenses similar to those issued under the new licensing rules for Personal Communications Services.[4] The BTA authorization holder should be required to provide an initial long-form application which identifies ITFS receive sites, the boundaries of protected service areas of existing co- and adjacent-channel stations, and the boundaries of neighboring BTAs. These "blueprints" for the BTA should be placed on public notice for comment and correction. Once this initial long-form application has been approved, the BTA authorization holder should receive a blanket authorization which would allow it to engineer its facilities in the most efficient and effective

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[3] The Commission has recently taken this approach in the cellular radio service. "Internal" cell sites which provide service within a system's geographically-defined market require no prior licensing by the Commission. Revision of Part 22 of the Commission's Rules Governing the Public Mobile Radio Services, CC Docket No. 92-115, ¶ 86 (released Sept. 9, 1994).

[4] PCS licensees are awarded a blanket license which authorizes them to construct transmitter facilities throughout the MTA or BTA, without the need to file additional applications. See 47 C.F.R. § 24.11. PCS licensees must comply with specific interference requirements in order to avoid interference to incumbent microwave stations and to other PCS licensees. See 47 C.F.R. § 24.237 et seq. The Commission clearly determined that its goal of avoiding interference to other service providers could be achieved even though PCS licensees would not be required to file applications for each transmitter site. The same determination is equally applicable to MMDS, and provides ample support for blanket licensing of transmitters throughout an MMDS BTA.

manner within the BTA, subject to the Commission's interference protection standards. It should be allowed to set up transmitter sites anywhere within the geographic service area without seeking prior approval for each of these sites, as long as installation would not increase the potential for interference to existing stations described in the BTA initial interference analysis.[5]

In place of individual long-form applications for each transmitter, the Commission should rely on a post-installation certification procedure, similar to the MMDS low-power signal booster rules (47 C.F.R. § 21.913(g)), which would provide a certain time period for other MMDS and ITFS licensees to claim interference. In order to ensure all adjacent operators receive notice, the Commission could require that such certifications would be served on co- and adjacent-channel ITFS and MMDS licensees, whose receive sites or protected service areas are located within 50 miles of the subject transmitter. Claims that the transmitting signal does not meet the Commission's signal strength limits at the receive site or borders of the protected service area can be resolved under the Commission's procedures for interference abatement. See new § 21.939.

The blanket licensing procedures outlined above would further the Commission's expressed goals to maximize flexibility for new BTA authorization

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[5] Not only would the blanket license approach provide greater flexibility to cover the BTA, it would also allow the licensee readily to serve separate populations or a particular community within the BTA. For example, a Hispanic or Asian neighborhood could be served with a specific transmitter providing different programming. The licensing approach outlined in the text would allow that service to be implemented quickly, thereby serving the public interest.

holders and to ensure interference protection for existing stations. BTA Order, ¶ 24.

- A blanket license benefits the BTA authorization holder and its subscribers because the licensee can develop the use of the MMDS channels in the BTA to meet the needs of subscribers, without the delays of the application approval process.

- The blanket licensing model would greatly ease the burdens on FCC Staff by reducing administrative review of multiple long-form applications and inevitable petitions to deny. Yet, the information of transmitters would be filed in construction certifications, and so, would be available for the Staff and existing stations.

- The requirement of an initial "blueprint" would get all existing licensees involved in the processing right away, thereby increasing their opportunities to ensure interference protection from the outset of implementation of service by the BTA licensee.

- The blanket license approach would also require existing licensees to file objections principally with respect to mistakes in the initial "blueprint" for the BTA or actual interfering signals. This would greatly reduce the delays engendered by the current petition to deny procedure and require the parties to focus on concrete disputes.

- By eliminating these administrative delays and costs, the blanket license approach is likely to increase the value of a BTA authorization to potential bidders.

Accordingly, as long as the Commission's interference protection standards are met, the Commission should issue blanket licenses for BTAs and permit the BTA authorization holder to configure its system to provide what it considers to be the most efficient and effective coverage within its service area.

III. THE COMMISSION SHOULD PROVIDE A MEANS FOR BTA SYSTEMS TO OPERATE ON ALL AVAILABLE FREQUENCIES.

The Commission has long recognized that an MMDS licensee generally must lease excess capacity airtime on ITFS frequencies in order to develop a viable wireless cable system. The BTA Order also recognizes the need to lease ITFS frequencies by, for example, giving the BTA authorization holder the right of first refusal on new ITFS excess capacity leases. See BTA Order, ¶ 41.

Despite this recognized need, the BTA Order fails to give the BTA operator an adequate opportunity to assure coverage of the BTA with the maximum number of ITFS channels.

First, the BTA authorization only includes the right to use the available channels among the 13 MMDS and MDS frequencies within the BTA. See BTA Order, ¶ 39.

Second, if the BTA authorization holder leases airtime on an ITFS frequency, then the protected service area of the ITFS station during commercial

operations is only the 35-mile circle centered at the ITFS transmitter site -- not the entire BTA. Id., ¶ 41. In contrast, (a) if the BTA authorization holder leases airtime on an MMDS station, then it has access to a protected service area of the larger of the BTA or the lessor station's protected service area, id., ¶ 45; and (b) if the BTA authorization holder is also the licensee of an ITFS station, then the protected service area of the ITFS channels would be the entire BTA, id., ¶ 41.

Third, the Commission has provided the BTA authorization holder with the exclusive right to obtain access to ITFS frequencies in the BTA pursuant to Section 74.990 of the Commission's Rules. Id. But, that rule only allows an MMDS licensee to gain access to eight of the 20 ITFS frequencies. 47 C.F.R. § 74.990(b).

Fourth, the location of most active ITFS stations is likely to be metropolitan areas. In the outlying areas of a BTA, it is unlikely that there are any operating ITFS stations from which to lease airtime.

There may be many instances where the BTA authorization holder also leases ITFS excess capacity airtime, but has no procedure which would facilitate extension of coverage, and service to subscribers, 5, 10 or 15 miles from the 35-mile protected service area of the leased ITFS station to the edge of the BTA.[6]

The Commission can eliminate this gap in its rules and benefit both the BTA and ITFS licensees. When the BTA authorization holder also leases airtime

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[6] Were there a substantial distance from the 35-mile protected service area to the boundary of the BTA, there may be additional ITFS stations from which to lease airtime.

on an ITFS station, the Commission should permit requests to place transmitters for the ITFS stations which would extend the reach of wireless cable operations to the boundaries of the BTA, subject to protection for existing co- and adjacent-channel stations, in conjunction with the authorization holder's MMDS channels. In order to ensure that ITFS frequencies are used for their primary instructional purpose, such a request could be accompanied by a request from the ITFS lessor station to establish receive sites, by agreement with the appropriate authorities, which could be served by the new transmitter. In the event that there is more than one co-channel ITFS stations within the BTA, such requests from the BTA authorization holder could encompass the consent of all operators for placement of a transmitter which would extend the service area on ITFS frequencies to the borders of the BTA.[7]

In order to preserve the potential use of ITFS frequencies for their instructional purpose, and to allow new ITFS applicants, the Commission should preserve the right of ITFS eligibles to apply for ITFS frequencies being used by the BTA authorization holder pursuant to the "extended" service area of existing licensees. Presumably, if there is an existing transmitting system in place, the ITFS applicant and BTA licensee would be able to develop a proposal to satisfy

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[7] In those BTAs where the authorization holder is not the lessee of airtime on ITFS stations with transmitter sites within the boundaries of the BTA, or there are no ITFS licensees from which to lease airtime, the Commission may consider modifications to the rights provided by Section 74.990 to increase the availability of fallow ITFS frequencies in the BTA, subject to a procedure which provides for recapture of ITFS channels.

both instructional and commercial needs. In the meantime, however, the public interest would be served by allowing maximum use of the BTA authorization holder's full complement of ITFS and MMDS frequencies within the BTA.

IV. THE COMMISSION SHOULD DEVELOP RULES WHICH PROVIDE FOR CONSISTENT TREATMENT FOR LEASED ITFS AND MMDS STATIONS.

An inconsistency appears in the Commission's new rules with respect to the treatment of protected service areas for leased ITFS and MMDS stations. The Commission states that "whenever BTA authorization holders in adjacent BTAs both lease the same ITFS channel group, such that the 35-mile protected circle of each extends into the BTA of the other," the BTA licensees "will not be required to protect that portion of the 35-mile circle associated with the other authorization holder that falls on his or her side of the boundary" absent an interference agreement. BTA Order, ¶ 41. There is no rule similar to this rule for MMDS stations, and, in any event, such a rule for MMDS would be inconsistent with the Commission's award of a 35-mile protected service area to all incumbents. See Second Order on Reconsideration, FCC 95-231 (released June 21, 1995). Indeed, when leasing airtime on MMDS stations, the BTA authorization holder obtains a protected service area which extends to the BTA boundary or the 35-mile protected circle whichever is larger. Id., ¶ 45. Thus, it appears possible that, if the BTA authorization holder is leasing airtime on MMDS stations colocated with ITFS stations with the BTA overlap, the MMDS stations would be protected for the full 35-mile circle into the adjacent BTA, but the ITFS stations would not.

Yet, the adjacent BTA licensee must protect the existing ITFS receive sites within its BTA.

There may be few instances in which there would be overlap of the 35-mile protected service areas for existing, colocated MMDS and ITFS stations leased by adjacent BTA authorization holders. However, if such instances occur, the Commission has provided inconsistent treatment for the MMDS and ITFS stations leased by the adjacent BTA authorization holder. This policy would have the effect of impairing the service area of all stations in the wireless cable system because the useable service area for all stations would be reduced to the smallest service area reached by all signals. Moreover, this policy may decrease the value of leased operations on ITFS stations by truncating the protected service area for commercial operations. While it is obvious that the BTA authorization holder and existing stations would need to discuss a negotiated resolution of the interference issues, the Commission's rules appear to make a complicated issue more difficult to resolve.

To eliminate this inconsistency, the Commission should require the BTA authorization holder -- which are in all instances the newcomers -- to provide interference protection for the 35-mile circular area of existing MMDS stations and leased airtime on ITFS stations. While this does not in itself solve the overlap problem, it places all the licensees on an equal footing in the negotiations and gives the parties a definite starting point for an agreement. The revised

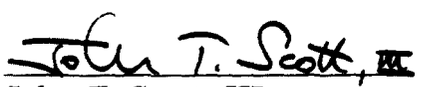
policy would also ensure that the protected service area available to existing ITFS stations for leased operations is not diminished

V. CONCLUSION

For the reasons set forth above, BAC requests that the Commission revise the rules and policies adopted in the BTA Order as described herein. These modifications to the Commission's new rules will improve the ability of wireless cable systems to provide efficient service over the large geographic service areas adopted for future stations.

Respectfully submitted,

BELL ATLANTIC CORPORATION

By: 
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